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13 MILLARD S. DREXLER, ALBERT GORE, JR.,
ARTHUR D. LEVINSON, JEROME P. YORK, and
14 APPLE COMPUTER, INC.

15 [Additional Counsel Listed on Signature Page.]

16 **UNITED STATES DISTRICT COURT**
17 **NORTHERN DISTRICT OF CALIFORNIA**
18 **SAN FRANCISCO DIVISION**

19 MARTIN VOGEL and KENNETH
20 MAHONEY, on Behalf of Themselves
and All Others Similarly Situated,

21 Plaintiffs,

22 v.

23 STEVEN P. JOBS, PETER
24 OPPENHEIMER, FRED ANDERSON,
WILLIAM V. CAMPBELL, MILLARD S.
DREXLER, ALBERT GORE, JR.,
25 ARTHUR D. LEVINSON, JEROME P.
YORK and APPLE COMPUTER, INC.,

26 Defendants.
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Case No. C 06 05208 MHP

**DEFENDANTS' RESPONSE TO MOTION
FOR APPOINTMENT OF LEAD
PLAINTIFF**

Hearing Date: December 4, 2006
Time: 2:00 PM
Courtroom: 15, 18th Floor
Judge: Honorable Marilyn H. Patel

1 Defendants Apple Computer, Inc., Steven P. Jobs, Peter Oppenheimer, Fred Anderson,
 2 William V. Campbell, Millard S. Drexler, Albert Gore, Jr., Arthur D. Levinson and Jerome P.
 3 York (collectively "Defendants") respectfully submit this statement in response to the Motion for
 4 Appointment of The New York City Employees' Retirement System ("NYCERS") as Lead
 5 Plaintiff.

6 Defendants take no position on who should be appointed lead plaintiff or lead counsel in
 7 this action. This statement, however, is without prejudice to, and does not waive, Defendants'
 8 right to challenge class certification at any later date on any appropriate grounds. In addition, this
 9 statement should not be construed as a waiver of Defendants' right to challenge any of plaintiffs'
 10 claims in this matter (including, but not limited to, their allegations as summarized in the motion
 11 for appointment of lead plaintiff), or to challenge the method by which potential damages should
 12 be measured. At the appropriate future time, Defendants will set forth their position on all such
 13 issues, and Defendants reserve all rights, defenses, and positions in the interim. In particular,
 14 Defendants reserve all rights to challenge any claims on standing grounds, and will oppose any
 15 attempt to advance claims that the lead plaintiff lacks standing to pursue.

16
 17 Dated: November 13, 2006

DAVID M. FURBUSH
 DALE M. EDMONDSON
 ROBERTA L. HARTING
 O'MELVENY & MYERS LLP

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 19
 20
 21 By: /s/ David M. Furbush
 David M. Furbush

22 Attorneys for Defendants STEVEN P. JOBS,
 23 PETER OPPENHEIMER, WILLIAM V.
 CAMPBELL, MILLARD S. DREXLER,
 24 ALBERT GORE, JR., ARTHUR D.
 LEVINSON, JEROME P. YORK, and
 25 APPLE COMPUTER, INC.
 26
 27
 28

1 Dated: November 13, 2006

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6 By: /s/ Yohance C. Edwards
Yohance C. Edwards

Attorneys for Defendant FRED ANDERSON

10 I, David M. Furbush, am the ECF User whose ID and password are being used to
11 file this Response to Motion for Appointment of Lead Plaintiff. In compliance with General
12 Order 45, X.B., I hereby attest that Yohance C. Edwards has concurred in this filing.

14 By: /s/ David M. Furbush
David M. Furbush